SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1444

JOHN YOUNG,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinion Below

The opinion of the Supreme Court of New Jersey (App. A of Petition) is reported at 57 N. J. 240 (1970).

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Statute Involved

The provisions of N.J.S. 2A:149A-2 are set forth in the Petition at page 3.

Statement

The Petitioner, John Young, was charged and convicted of entering Trenton Central High School on March 12, 1969 in violation of N.J.S. 2A:149A-2, the so-called School Intruder Act. Petitioner Young was a lay minister with the Unitarian Universalist Association although he has had no formal educational background to prepare him for such work (R285-1 to 37). On the day prior to the incident John Young planned and took part in picketing of the Trenton High School over a dispute relating to the refusal of certain students to salute the United States flag (R247-20 to 21; 181-5 to 7). That night, in a racially tense atmosphere, Dr. Ercell Watson, Superintendent of the Trenton school system, arranged to meet with John Young at Dr. Watson's office which was located some distance from the high school (R251-17 to 18). Instead, John Young went directly to Trenton Central High School on the morning of March 12, 1969 (R17-6 to 11; 252-12 to 15). At a meeting held the previous night at the House of Soul a sit-in had been planned for the high school on that morning (R183-16 to 20; 198-23 to 25; 199-1; 230-22 to 26).

At the time that John Young chose to go to Trenton Central the flag dispute had been resolved and Young

was so notified (R15). Notwithstanding the resolution, Petitioner Young requested a meeting with the principal of the high school, Dr. Daniels. Dr. Daniels received Mr. Young and a number of students in his office but the meeting was aborted when some of the students felt that they were not being heard (R44; 56-1 to 12; 224; 258; 259).

As the meeting in Dr. Daniel's office was ending, Dr. Daniels requested John Young to leave the high school saying, "Rev. Young, you are causing me much trouble now, you are disrupting the school, you should leave . . . you are making the job very difficult for me. It is a difficult job as it is." John Young then replied, "You didn't have to take this job." (R45). Dr. Daniels then presented to John Young a copy of the School Intruder Law, stating to him, "You are disrupting the school in violation of this law." John Young then repied, "Dr. Daniels, don't show me just one law, show me all the laws that pertain to me." (R46). Dr. Daniels also requested that John Young leave the high school after showing him the copy of the law. John Young refused to heed either of these requests (T48-15 to 21).

Dr. Daniels suggested a meeting in the school auditorium but this was refused (R31-16 to 19). It was then agreed to hold the meeting in the cafeteria. In the cafeteria, Dr. Watson, who had subsequently arrived at the school, also asked John Young to leave the building saying, "I told him three distinct times his behavior was not acceptable and that he should leave the building. I told him I didn't think he was contributing anything to the situation. I thought he should leave the building . . . he did not leave the building at my request." (R26-12 to 19) Asked on recross-examination why he, Dr. Watson, asked John Young to leave the building, Dr. Watson replied,

"Because I thought his presence there, his very presence led to the disruption of the high school." (R37-15 to 17)

Detective Quintillious Smith related some of the conduct of John Young during the day of March 12, 1969. Detective Smith testified that John Young became very loud and boisterous after Dr. Daniels read him the School Intruder Law (R70-17 to 19). Detective Smith also heard John Young state that he "would stay in the corridors until hell freezes over, if necessary." (R71-1 to 3). Detective Smith then approached John Young in the cafeteria and asked him to leave, whereupon John Young replied, according to the testimony of Detective Smith, that "he was not going to leave the cafeteria; Mr. Young became very loud, very boisterous, and he again said to me that he would remain there, if necessary, until hell freezes over . . . He also informed me that he was afraid of 'no damn cops.'" (R71; 72-2 to 8) This statement to the effect that he, John Young, was afraid of "no damn cops" was made to the entire student body present in the cafeteria at that time (R81, 82). Detective Smith further stated that John Young "infuriated the students, he himself. I don't know what happened to the man that particular day; it really shocked me." (R80-3 to 5)

The evidence clearly indicates that a general disruption occurred requiring a change of scheduled classes and a delay of the lunch period.

ARGUMENT

1. Petitioner suggests that the so-called "compelling state interest test" should be applied to the facts herein. The "compelling state interest test" is of fairly recent origin and has been used to determine cases involving the right to vote and the right to migrate. See *Kramer*

v. *Union Free School District #15,* 395 U. S. 621 (1969); *Evans* v. *Cornman,* 398 U. S. 419 (1970); *Shapiro* v. *Thompson,* 394 U. S. 618 (1969). The Supreme Court of New Jersey decided the matter below with reference to the *Kramer, Shapiro* and *Evans* decisions and found that the very test suggested when applied to the statute herein considered did not deny a common right held by all but merely proscribed that a specific act coupled with a hostile intent would come within the forbidden classification.

Clearly no one is denied access to the schools of New Jersey even under the most literal interpretation of the statute. However, to elevate the right to enter schools with the basic constitutional guarantees of voting and travel would eliminate that administrative control necessary to prevent agitators from disrupting the education processes. Accordingly, the decision below is most appropriate and correct and further examination by this Court, it is submitted, is unnecessary.

2. Petitioner next seeks refuge in claiming a denial of equal protection, presumably of the 14th Amendment to the Constitution, suggesting that the list of exceptions to the statute, i.e., students, teachers, employees and parents or guardians of attending students is "patently arbitrary and capricious without any conceivable basis in fact." (Petition, p. 14) The New Jersey Supreme Court found that the intent of the statute was to protect the educational processes from disruption and interference (57 N. J. 249). It further found that those persons excluded from the scope of the statute were ones easily viewed to be connected with the normal educational procedures carried out in the school suggesting that the Legislature therefore could properly find the individuals so excepted not to be the probable source of the evil with which it [the Legislature] was concerned." (57 N. J. 249)

In citing *Turner* v. *Fouche,* 396 U. S. 346 at 362 (1970) the court below considered the traditional test for the denial of Due Process as set forth therein, i.e. "whether the challenged classification rests on grounds wholly irrelevant for the achievement of a valid state objective", and held quite correctly that the Legislature appropriately determined the classifications complained of to be constitutionally proper.

3. Petitioner next suggests that the New Jersey statute in question is "vague" in light of *Karp* v. *Collins,* 310 F. Supp. 627, District of New Jersey (1970), which court had occasion to consider another New Jersey statute, N.J.S. 2A:170-1. However, this Court in *Younger* v. *Harris,* 400 U. S. ——, 91 S. Ct. 746 (1971) devitalized the District Court holding in *Karp.* Accordingly, there exists no important question of federal law and references and comparisons to the *Karp* decision and its progeny are therefore unavailing to Petitioner.

Moreover, the New Jersey Supreme Court in considering the proposition without the benefit of the *Younger* holding found no difficulty in applying N.J.S. 2A:149A-2 to a factual pattern where an individual, such as Petitioner herein, combines an otherwise lawful activity with a proscribed hostile intent. Even the suggested infirmities found by the three judge district court in the pre-*Younger-Karp* decision could not validly sustain a holding of unconstitutionality with respect to the statute herein considered. The excellent analysis of the New Jersey Supreme Court cited at 55 N. J. 255 to 264 strongly compels a finding of constitutional validity relating to any proposition suggesting vagueness.

4. The claim of petitioner that the statute in question results in a "chilling effect" on the exercise of First

Amendment rights is effectively laid to rest in *Younger* v. *Harris, supra,* in that opinion this Court commented extensively on the problems raised by a supposed "chilling effect" as well as the applicability of *Dombroski* v. *Pfister,* 380 U. S. 479 (1965) to circumstances parallel to those extant herein. To suggest, as Petitioner does, that educational institutions would ". . . hesitate to invite any speaker with a viewpoint to address the students or to permit any public forums to be held on the school premises." (Petition, p. 17) because of the decision below not only flies in the face of the decisions of this Court but invests Petitioner's arguments with more rhetoric than reason.

5. Petitioner's claim of "entrapment" in violation of the Due Process Clause of the Constitution as interpreted by *Cox* v. *Louisiana,* 379 U. S. 559 (1965) is as strained in concept as it is in fact. This Court in *Cox* did indeed suggest a "sort of entrapment" in the activities of the police. However, to put the instant matter in proper perspective it should be noted that there is no suggestion by the Petitioner that he was invited into the school for purposes forbidden by the questioned statute, i.e. ". . . with the intent of disrupting classes or of otherwise interfering with the peace and good order of the place . . .", such intendment being the *sine qua non* of entrapment.

Moreover, accepting no more than petitioner's rendition of the facts at face value, the activities of the school authorities fall far short of an "entrapment" such as that obliquely alluded to in *Cox.* Accordingly, it is submitted that the question presented by petitioner's Point 5 is too insignificant to be considered by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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